

## Department of Justice

## §48.13

provided in this section. In setting a place for the hearing, preference shall be given to the community in which the applicants' newspapers operate.

(2) Mail notice of the hearing to the parties, to each person who filed written comments or a request for a hearing, and to any other person he believes may have an interest in the proceeding.

(3) Permit discovery by any party, as provided in the Federal Rules of Civil Procedure; except that he may place such limits as he deems reasonable on the time and manner of taking discovery in order to avoid unnecessary delays in the proceedings.

(4) Conduct a hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556. At such hearing, the burden of proving that the proposed arrangement meets the requirements of the Newspaper Preservation Act will be on the proponents of the arrangement. The rules of evidence which govern civil proceedings in matters not involving trial by jury in the courts of the United States shall apply, but these rules may be relaxed if the ends of justice will be better served in so doing: Provided, that the introduction of irrelevant, immaterial, or unduly repetitious evidence is avoided. Only parties to the proceedings may present evidence, or cross-examine witnesses.

(b) The applicants and the Assistant Attorney General in charge of the Antitrust Division shall be parties in any hearing held hereunder. Other persons may intervene as parties as provided in §48.11.

(c) The Assistant Attorney General for Administration shall procure the services of a stenographic reporter. One copy of the transcript produced shall be placed in the public docket. Additional copies may be purchased from the reporter or, if the arrangement with the reporter permits, from the Department of Justice at its cost.

(d) Following the hearing the administrative law judge shall render to the Attorney General his recommendation that the proposed arrangement be approved or denied approval in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing

record, and shall include a statement of the administrative law judge's findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be filed and sent to each party.

(e) Within 30 days of the date the administrative law judge files his recommendation, any party may file written exceptions to the recommendation for consideration by the Attorney General. Parties shall then have a further 15 days in which to file responses to any such exceptions.

### §48.11 Intervention in hearings.

(a) Any person may intervene as a party in a hearing held under these regulations if (1) he has an interest which may be affected by the Attorney General's decision, and (2) it appears that his interest may not be adequately represented by existing parties.

(b) Application for intervention shall be made by filing in accordance with §48.3(a) and (b), within 20 days after a hearing has been ordered, a statement of the nature of the applicant's interest, the way in which it may be affected, the facts and reasons in support thereof and the reasons why the applicant's interest may not be adequately represented by existing parties.

(c) Existing parties may file a statement in opposition to or in support of an application to intervene within 10 days of the filing of the application.

(d) Applications for intervention shall be decided by the Attorney General.

(e) Intervenors shall have the same rights as existing parties in connection with any hearing held under these regulations.

### §48.12 Ex parte communications.

No person shall communicate on any matter related to these proceedings with the administrative law judge, the Attorney General or anyone having decisional responsibility, except as provided in these regulations.

### §48.13 Record for decision.

(a) The record on which the Attorney General shall base his decision in the

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event a hearing is not held shall be comprised of all material filed in accordance with these regulations, including any material that has been ordered withheld from public disclosure.

(b) If a hearing is held, the record on which the Attorney General shall base his decision shall consist exclusively of the hearing record, the examiner's recommendation and any exceptions and responses filed with respect thereto.

#### § 48.14 Decision by the Attorney General.

(a) The Attorney General shall decide, on the basis of the record as constituted in accordance with § 48.13, whether approval is warranted under the Act. In rendering his decision, the Attorney General shall file therewith a statement of his findings and conclusions and the reasons therefor, or where a hearing has been held, he may adopt the findings and conclusions of the administrative law judge.

(b) Approval of a proposed arrangement by the Attorney General shall not become effective until the tenth day after the filing of the Attorney General's decision as provided in this section.

#### § 48.15 Temporary approval.

(a) If the Attorney General concludes that one or more of the newspapers involved would otherwise fail before the procedures under these regulations can be completed, he may grant temporary approval of whatever form of joint or unified action would be lawful under the Act if performed as part of an approved joint newspaper operating arrangement, and that he concludes is: (1) Essential to the survival of the newspaper or newspapers; and (2) most likely capable of being terminated without impairment to the ability of both newspapers to resume independent operation should final approval eventually be denied.

(b) Upon the filing of a request for temporary approval, the applicants shall publish notice of such application on the front pages of their respective newspapers for a period of three consecutive days in the case of daily newspapers or in the next issue in the case of weekly newspapers. The notice shall state:

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(1) That a request for temporary approval of a joint operating arrangement or other joint or unified action has been made to the Attorney General; and

(2) That anyone wishing to protest the application for temporary approval may do so by delivering a statement of protest or telephoning his views to an employee of the Department of Justice, whose name, address and telephone number shall be designated by the Department upon receipt of the application for temporary approval, and that such protests must be received by the Department within five days of the first publication of notice in accordance with paragraph (a) of this section.

(c) The notice required by this section shall be in addition to the notice required by § 48.6.

(d) Such temporary approval may be granted without hearing at any time following the expiration of the period provided for protests, but shall create no presumption that final approval will be granted.

#### § 48.16 Procedure for filing of terms of a renewal or amendment to an existing joint newspaper operating arrangement.

Within 30 days after a renewal of or an amendment to the terms of an existing arrangement, the parties to said renewal or amendment shall file five copies of the agreement of renewal or amendment. In the case of an amendment, the parties shall also file copies of the amended portion of the original agreement.

[Order No. 558-73, 39 FR 7, Jan. 2, 1974, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

### PART 49—ANTITRUST CIVIL PROCESS ACT

Sec.

49.1 Purpose.

49.2 Duties of custodian.

49.3 Examination of the material.

49.4 Deputy custodians.

AUTHORITY: 15 U.S.C. 1313.

SOURCE: At 60 FR 44277, Aug. 25, 1995, unless otherwise noted.